

THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

SERVICE CONTRACT
C-08-322-09-16

THIS CONTRACT is made and entered into this 16th day of September, 2008 by and between the **County Of Hidalgo, Texas** ("County"), and **Toromont Energy Systems, Inc. a Delaware Corporation** ("Company").

WHEREAS, Company responded to advertised notices for bids for "**Service & Repairs of Chillers and General HVAC Equipment**" (the "Services"); and

WHEREAS, Company submitted a bid to provide services in accordance with the specifications as bid, a copy of such specifications and bid being attached hereto as Exhibits "A" and "B" respectively, and incorporated herein for all purposes (the "Specifications"); and

WHEREAS, in recognition of and in consideration of Company's agreement to perform the Services in accordance with Specifications, the Commissioners Court of County awarded the bid to Company.

NOW, THEREFORE, in mutual consideration of the foregoing and the further consideration of the following, the parties hereto agree as follows:

1. County and Company hereby agrees that this Contract is entered into in order to provide the Services to locations within Hidalgo County for "**Service and Repairs of Chillers and General HVAC Equipment**". This Contract does not extend to any third parties any duties or benefits conferred in any manner hereunder or otherwise.

2. Company hereby promises and agrees to render and provide, during the term of this Contract, and shall be obligated to render and provide the Services in accordance with the

Specifications within **Hidalgo County** following a request for Services by the his designated agent. Company agrees in performing the Services that it will use proper professional standards, comply with any and all appropriate laws and regulations in providing the Services, and devote such time as is necessary to safely and efficiently provide the Services.

3. This Contract shall be for a period beginning September 16, 2008 and ending on September 16, 2009, and maybe extended at the sole discretion of County for an additional one (1) year period, unless this Contract is terminated pursuant to the provisions herein, whichever occurs first. County also reserves the right to continue this bid for an additional sixty (60) day Grace Period, under the same rates terms and conditions.

4. As a condition of this Contract, Company shall hold and maintain throughout the term of this Contract all licenses and permits required, or which may be required by any authority during the term hereof to provide the Services.

5. All trucks or vehicles operated by the Company to perform the Services shall contain all equipment required by any authority to operate on streets and roads and all persons in the employ of Company who operate such trucks or vehicles shall have the required licenses, qualifications, skill and expertise to perform such Services and shall comply with all laws, rules and regulations prescribed by any agency or authority having jurisdiction with regard to the operation of such trucks or vehicles in providing the Services.

6. As consideration for rendering the Service provided for in this Contract, the County agrees to pay Company the amounts specified in Exhibit "B" attached hereto payable against written invoice submitted by Company.

7. Company shall provide insurance in force on all its vehicles and all persons connected with providing services under this Contract naming County as an additional insured (with the

13. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

14. This Agreement may be terminated by either party without cause upon thirty (30) days written notice.

15. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

16. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Hidalgo County.

WITNESS our hands in duplicate originals this _____ day of _____, 2008.

COUNTY OF HIDALGO

ATTEST:

By: _____
Juan D. Salinas, III, County Judge


Arturo Guajardo Jr., County Clerk

COMPANY:

By: _____
Printed Name: _____
Title: _____

APPROVED AS TO FORM:

Atlas & Hall, L.L.P.

By:  _____

**EXHIBIT “A”
SPECIFICATIONS**

EXHIBIT "A"

HIDALGO COUNTY BUILDING AND GROUNDS "Service and Repairs of Chillers and General HVAC Equipment" Bid No.: 2008-322-09-03-SMA

SPECIFICATIONS, REQUIREMENTS AND OTHER TERMS & CONDITIONS

SCOPE OF SERVICES:

The requirement services and repairs contract will encompass all services project-related to Chillers, General HVAC Equipment and delivery parts to the Hidalgo County including, but not limited to, the following:

REQUIREMENTS:

1. The service contract will be on an Hourly/Time repair rate which commences upon arrival at the job site.
2. Vendor will respond for service within a two (2) hour minimum to a four (4) hours maximum time frame.
3. All repairs and services (with mark up rate), will be on an "AS NEEDED BASIS-ONLY" There is no guaranteed of an annual volume, for either services and/or repairs.
4. Vendor will provide original equipment manufacturer (OEM) repair parts.
5. Vendor must have sufficient Certified HVAC personnel staff, with a minimum of four (4) years experience, assignee to Hidalgo County service contract. The County requires a minimum of two certified HVAC personnel and at least two assistants.
6. Vendor must stock the necessary parts and supplies, or be able to provide said items within 24 hours.
7. In the event of complete chiller failure, and at the request and final approval of the Hidalgo County Building and Grounds Director, contractor should have the ability to quickly provide portable air conditioning or other types of emergency equipment until chiller is fully operational. Vendor will supply Hidalgo County with a bid for portable air conditioning equipment.
8. Vendors must, upon request, furnish satisfactory evidence of their ability to furnish products or services in accordance with the terms and conditions of these specifications.
9. All products and/or services furnished under this RFB shall be warranted by the vendor to be free from defects and fit for the intended use.

10. The awarded vendor shall observe and obey all laws, ordinances, rules and regulations of the Federal, State and local government which may be applicable to the supply of these products and/or services.
11. Vendor shall possess at the time of opening of the RFB all necessary permits of licenses required for the sale of these products and/or services. This section will contain any licenses, certifications and assurances as required by Hidalgo County, the State of Texas, the Original Equipment Manufacturer, etc. ensuring the vendor (s) is an authorized distributor.
12. Vendor (s) will provide and maintain all the required Insurance and/or Bonds as described and listed in: **Insurance Requirements: See Exhibit "C" attached hereto.**
13. Utilization of Personnel and Materials: Vendor shall make every effort to provide services in an efficient and cost effective manner. This includes dispatching a technician that is able to perform the work within a reasonable time period, billing for helpers only when absolutely necessary for performance of the work, and minimizing unnecessary parts replacement.

BID AWARD:

14. All bidders are hereby notified that Hidalgo County shall consider all factors it believes to be relevant in selecting the bid that provides the best value for Hidalgo County including, but not limited to the following:
 - a. The overall purchase price.
 - b. Response Time: The proximity of the bidder as it relates to the ability to perform contract for Hidalgo County. Hidalgo County will consider as a determining factor to award this project to the vendor committed to respond to less than a two (2) hour guaranteed service response time frame.
 - c. The reputation of the bidder.
 - d. The quality of the bidder's goods or services from references.
 - e. The bidder's past performance.
15. Hidalgo County prefers to award the entire contract to a single Vendor; although, the County reserves the right to award a primary contract and a secondary contract in an effort to secure a back-up vendor to be used in emergency situations in the event the primary vendor is unable to respond as needed.
16. Hidalgo County may award to a secondary vendor that will be called under the following circumstances:
 - a) When primary awarded vendor does not arrive within the two (2) hour commitment or informs the County of its inability to comply.
 - b) When the County finds that an additional service provider is required due to simultaneous break downs have occurred.

17. Hidalgo County reserves the right to award the bid to MULTIPLE bidders if the County determines it is in it's best interest to do so.

BID PAGE

18. Bids will be considered irregular and may be rejected by Hidalgo County if they show any omissions, alterations of form, additions, or conditions not called for, unauthorized alternate bids, or irregularities of any kind. However, Hidalgo County reserves the right to waive any irregularities and to make the award providing the best value to the County.
19. Vendor must thoroughly fill in each section of the Bid Page (Exhibit "B") if applicable. INCOMPLETE submittals shall be considered a probable cause for disqualification.

TERMS & CONDITIONS:

1. Term of contract is for one (1) year period with County's option to extend the contract for an additional one (1) year term under the same rates terms and conditions.
2. County reserves the right to continue this contract for an additional sixty (60) day grace period at the end of the contract term due to an unforeseen delay in the award of a new bid for next contract term
3. County will seek the purchase of parts and service from state awarded vendors and under cooperative purchasing participation whenever it is, in the County's best interest to do so.
4. After contract is awarded if/and successful awarded contractor defaults in meeting the general instructions to bidders(s) and/or in complying with the contract agreement, Hidalgo County reserves the right to procure the articles and services from other sources and hold the defaulting contractor responsible for any excess cost occasioned thereby. In such event, Hidalgo County shall charge the successful contractor the difference for any additional cost to the County.
5. Any contract awarded to a successful bidder will be in effect until:
 - (a) The contract expires
 - (b) Delivery acceptance of products and/or performance of services ordered, or
 - (c) Terminated by County with thirty (30) day's written notice prior to cancellation.
6. Bid percent of markup, over cost on ALL parts, materials and rental equipment necessary to complete needed repair or replacement. All other equipment required to perform under this contract shall be considered part of the hourly ware. Hidalgo County may request a copy of original invoice as necessary, to insure conformance with markup percentage allowed by contract
7. All invoices will be reviewed for billed hours, materials and parts used, and for compliance

with contract terms and conditions prior to approving invoice for payment.

8. References: Lists of references are required by Hidalgo County.

9. Market Volatility and Unit Price Adjustments:

Hidalgo County recognizes that during periods of national crisis and unstable economic conditions, unforeseen price increases might affect costs for goods and services contracted on an annual basis. The following procedure may be employed to mediate price volatility:

a) **Requesting Price Adjustment:** Upon written request of the Vendor to the County Purchasing Agent, the County may review evidence of prevailing industry-wide market conditions that warrant an adjustment in bid prices contained in the contract.

- A Vendor must tie any price change clause to an industry-wide or otherwise nationally recognized index, or some other form of verifiable document. Such written request must be accompanied by a certified copy of the supplier's advisory or notification to the vendor of the price changes.
- The Vendor must put the Purchasing Agent on the mailing lists for such publications so that the Purchasing Agent can monitor said changes. Such membership shall be at no cost to the County.
- The County Purchasing Agent retains the right to determine whether or not such proposed price changes are in the best interest of the County.
- No price escalation will be authorized in excess of the amount of the increase referred to in the supplier's notice.
- The County may only grant a price increase if the evidence presented is deemed reliable. Should the County allow a price increase, the approved price change shall be honored for all orders received by the vendor or contractor after the effective date of such price change. Approved price changes are not applicable to orders already issued and in process at time of price change.

b) **Price Reduction:** Vendor shall notify the County at the time when the Vendor's costs for items and/or supplies reduce due to stabilization in the market at which time prices for items on this contract shall be reduced accordingly. Failure by the Vendor to notify the County of a decrease in costs for items and/or supplies for which the Vendor was granted a price adjustment, may result in immediate termination of this contract and the County shall not be obligated to pay the Vendor the difference between the contract price and the price adjustment.

c) **Timeframe for Adjusted Price Increases:** Price increases are only valid for the quarter in which they are requested and approved. Prices shall return to the original contract price at the beginning of the following quarter unless a Vendor notifies the County in writing within ten (10) days of expiration of the quarter in which the price increase is in effect, that it desires to have the price increase continue or that the Vendor is requesting a different price increase for the following quarter. Such request must be supplemented with sufficient justification to demonstrate that the price increase remains necessary. The County Purchasing Department shall have sole discretion whether to grant the price increase extension. The County too, shall have discretion to unilaterally reduce, eliminate or extend a

price adjustment to the Vendor at any time upon written notice from the County to the Vendor demonstrating justification for such reduction, elimination or extension of the price adjustment.

d) **Allowable Review Periods:** Price adjustment reviews may only be requested by the Vendor on a quarterly basis. However, the County may at its own discretion, conduct temporary price adjustment reviews at any time. The County Purchasing Agent and/or the County Auditor reserve the right to audit and/or examine any pertinent books, documents, papers, records or invoices relating directly to the contract transaction in question after reasonable notice and during normal business hours.

10. **Dollar Limit to Price Changes:** The total increase in contract price shall not exceed twenty-five percent (25%) of the original contract price during the contract term.

ADDITIONAL INFORMATION:

Hidalgo County is requesting that any and all questions, inquires and clarifications regarding quotes, bids, proposals or statements of qualifications be addressed to Martha L. Salazar, CPPB, Purchasing Agent, 2812 South Business Hwy. 281, Edinburg, Tx 78539

ALL WRITTEN INQUIRIES WILL BE ACCEPTED VIA FACSIMILE NO LATER THAN, Wednesday, August 27, 2008 by 5:00 p.m. Responses to said inquiries will be sent to all applicants via facsimile by no later than Friday, August 29 , 2008 by 5:00 p.m.

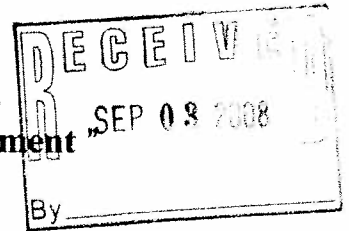
EXHIBIT "B"
VENDOR'S RESPONSE

2011

EXHIBIT "B"

BID PAGE

HIDALGO COUNTY BUILDINGS AND GROUNDS "Service and Repairs of Chillers and General HVAC Equipment" Bid No. 2008-322-09-03-SMA



Vendor must thoroughly fill in each section of the Bid Page (Exhibit "B") if applicable. INCOMPLETE submittals shall be considered a probable cause for disqualification.

The Repair contract will be for hourly/time repair rate upon arrival at the job site.

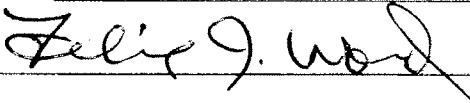
SERVICING CHILLERS	
A.) NORMAL BUSINESS HOURS: 1.) Technician: <u>\$62.00</u> 2.) Assistant: <u>\$50.00</u>	B.) AFTER HOURS: (Weekends & Holidays) 1.) Technician: <u>\$93.00</u> 2.) Assistant: <u>\$75.00</u>
C.) PARTS: Bid percent of markup, over cost on ALL parts, materials and rental equipment necessary to complete needed repair or replacement. All other equipment required to perform under this contract shall be considered part of the hourly ware. Hidalgo County may request a copy of original invoice as necessary, to insure conformance with markup percentage allowed by contract 1.) Cost plus <u>33</u> %	D.) WARRANTIES: 1.) All: <u>all parts 1-year</u> <u>all labor 30 days</u>
E.) TIME OF RESPONSE 1.) Chillers within <u>2</u> (hrs)	
SERVICING GENERAL HVAC EQUIPMENT	
A.) NORMAL BUSINESS HOURS 1.) Technician: <u>\$62.00</u> 2.) Assistant: <u>\$50.00</u>	B.) AFTER HOURS (Weekends & Holidays) 1.) Technician: <u>\$93.00</u> 2.) Assistant: <u>\$75.00</u>
C.) PARTS Bid percent of markup, over cost on ALL parts, materials and rental equipment necessary to complete needed repair or replacement. All other equipment required to perform under this contract shall be considered part of the hourly ware. Hidalgo County may request a copy of original invoice as necessary, to insure conformance with markup percentage allowed by contract 1.) Cost plus <u>33</u> %	D.) WARRANTIES 1.) All: <u>all parts 1-year</u> <u>all labor 30 days</u>
E.) TIME OF RESPONSE 1.) General Equipment within <u>2</u> (hrs.)	F.) EMERGENCY EQUIPMENT 1.) Portable Chiller (per day) <u>\$356.00</u> (per week) <u>\$2394.00</u> (per month) <u>\$7448.00</u> 2.) Hourly Rate: <u>\$62.00</u> 3.) Set-up time & removal: <u>one day each</u> <u>for set up and removal times</u> <u>2 technicians</u>

BIDDER'S/COMPANYNAME: Toromont Energy Systems

ADDRESS: 3150 N. Indiana

CITY: Brownsville STATE: TX ZIP CODE 78520

PHONE No. 877-877-3939 FAX No. 409-722-8893

SIGNATURE OF AUTHORIZED PERSON: 

PRINTED NAME: Felix J. Word TITLE: Service Supervisor Brnsv. Branch

E-MAIL ADDRESS: fword@toromontsystems.com

**EXHIBIT “C”
INSURANCE**

ACORD**CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YYYY)
06/12/2008

PRODUCER
Aon Risk Insurance Services West, Inc.
fka Aon Risk Services, Inc. of Arizona
1850 North Central Avenue
Suite 1700
Phoenix AZ 85004 USA

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

PHONE: (866) 283-7122 FAX: (847) 953-5390

INSURED
Toromont Energy Systems Inc.
2140 Well Spring
Beaumont TX 77705 USA

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Discover Property & Casualty Ins Co	36463
INSURER B:	Fidelity & Guaranty Ins Co	35386
INSURER C:		
INSURER D:		
INSURER E:		

COVERAGES SIR May Apply

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. LIMITS SHOWN ARE AS REQUESTED

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE(MMDDYY)	POLICY EXPIRATION DATE(MMDDYY)	LIMITS	
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC	D003Q00094	07/01/08	07/01/09	EACH OCCURRENCE	\$1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$100,000
						MED EXP (Any one person)	Excluded
						PERSONAL & ADV INJURY	\$1,000,000
						GENERAL AGGREGATE	\$10,000,000
						PRODUCTS - COMP/OP AGG	\$1,000,000
						SIR/Ded	\$250,000
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON OWNED AUTOS	D003A00271 Automobile - AOS &TX	07/01/08	07/01/09	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
						BODILY INJURY (Per person)	
						BODILY INJURY (Per accident)	
						PROPERTY DAMAGE (Per accident)	
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	
						OTHER THAN AUTO ONLY: EA ACC	
						AGG	
		EXCESS UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION				EACH OCCURRENCE	
						AGGREGATE	
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	D003w00324 Workers' Compensation-AC	07/01/08	07/01/09	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTHER
A			D003w00323 Workers' Compensation -	07/01/08	07/01/09	E.L. EACH ACCIDENT	\$1,000,000
						E.L. DISEASE-EA EMPLOYEE	\$1,000,000
						E.L. DISEASE-POLICY LIMIT	\$1,000,000
		OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

The County of Hidalgo is named as an Additional Insured excluding Workers Compensation and Employers Liability as required by written contract but limited to the operations of the Insured under said contract, and always subject to the policy terms, conditions and exclusions. Cancellation provision shown herein is subject to shorter or

CERTIFICATE HOLDER

County of Hidalgo
Purchasing Dept.
100 E. Cano
4th. Floor
Admin. Bldg.
Edinburg TX 78539 USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Aon Risk Insurance Services West, Inc.

Holder Identifier :

Certificate No : 570029036066